

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KEITH ALLEN WARREN,

Plaintiff,

v.

DESIREE HULTENSCHMIDT, et al.,

Defendants.

Case No. 3:23-cv-00543-ART-CLB

Order Dismissing Complaint Without
Prejudice and With Leave to Amend**I. SUMMARY**

Pro se Plaintiff Keith Allen Warren, who is in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) The matter of the filing fee will remain temporarily deferred. Plaintiff then filed a First Amended Complaint (“FAC”), which the Court screened and dismissed with leave to file an amended complaint. (ECF No. 9.) Plaintiff has filed a Second Amended Complaint (“SAC”), which is now the operative complaint. (ECF No. 11.)¹ The Court, therefore, screens the SAC under 28 U.S.C. § 1915A. He has also filed a motion for leave to file excess pages and a motion for appointment of counsel, which the Court will address. (ECF Nos. 12-13.)

II. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.*

¹ “As a general rule, when a plaintiff files an amended complaint, “[t]he amended complaint super[s]sedes the original, [and the original is] treated thereafter as non-existent.” *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (internal quotation omitted).

1 §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. See
2 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a
3 claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
4 the violation of a right secured by the Constitution or laws of the United
5 States; and (2) that the alleged violation was committed by a person acting under
6 color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

7 In addition to the screening requirements under § 1915A, under the Prison
8 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated
9 person’s claim if “the allegation of poverty is untrue” or if the action “is frivolous
10 or malicious, fails to state a claim on which relief may be granted, or seeks
11 monetary relief against a defendant who is immune from such relief.” 28 U.S.C.
12 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief
13 can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the
14 Court applies the same standard under § 1915 when reviewing the adequacy of
15 a complaint or an amended complaint. When a court dismisses a complaint under
16 § 1915(e), the plaintiff should be given leave to amend the complaint with
17 directions as to curing its deficiencies, unless it is clear from the face of the
18 complaint that the deficiencies could not be cured by amendment. See *Cato v.*
19 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

20 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
21 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
22 failure to state a claim is proper only if it is clear that the plaintiff cannot prove
23 any set of facts in support of the claim that would entitle him or her to relief. See
24 *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
25 determination, the Court takes as true all allegations of material fact stated in
26 the complaint, and the Court construes them in the light most favorable to the
27 plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).
28 Allegations of a *pro se* complainant are held to less stringent standards than

1 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
2 While the standard under Rule 12(b)(6) does not require detailed factual
3 allegations, a plaintiff must provide more than mere labels and conclusions. *See*
4 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the
5 elements of a cause of action is insufficient. *See id.*

6 Additionally, a reviewing court should “begin by identifying pleadings
7 [allegations] that, because they are no more than mere conclusions, are not
8 entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
9 “While legal conclusions can provide the framework of a complaint, they must be
10 supported with factual allegations.” *Id.* “When there are well-pleaded factual
11 allegations, a court should assume their veracity and then determine whether
12 they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
13 complaint states a plausible claim for relief . . . [is] a context-specific task that
14 requires the reviewing court to draw on its judicial experience and common
15 sense.” *Id.*

16 Finally, all or part of a complaint filed by an incarcerated person may be
17 dismissed *sua sponte* if that person’s claims lack an arguable basis either in law
18 or in fact. This includes claims based on legal conclusions that are untenable
19 (*e.g.*, claims against defendants who are immune from suit or claims of
20 infringement of a legal interest which clearly does not exist), as well as claims
21 based on fanciful factual allegations (*e.g.*, fantastic or delusional scenarios). *See*
22 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); *see also McKeever v. Block*, 932
23 F.2d 795, 798 (9th Cir. 1991).

24 **III. SCREENING OF COMPLAINT**

25 In the SAC, Plaintiff sues 52 Defendants for several different incidents
26 involving medical care or lack thereof for issues including hernias, eyeglasses,
27 and a swollen ankle, as well as for issues related to the grievance and medical
28 kite systems. (ECF No. 11 at 2-14.) Plaintiff has obviously made some effort to

1 comply with the Court's previous order to file a shorter complaint that briefly and
2 plainly states the factual allegations. At 119 pages, the SAC is slightly shorter
3 than the FAC, and Plaintiff has included line numbers on the pages. But the
4 writing is still miniscule and almost entirely on un-lined paper.

5 The Court dismissed the FAC without prejudice and with leave to amend
6 because it failed to comply with District of Nevada General Order No. 2021-05.
7 General Order No. 2021-05, which applies to *pro se* civil rights complaints filed
8 by inmates, provides that a complaint or amended complaint may not exceed 30
9 pages. It further states that if a plaintiff believes that he needs more than 30
10 pages, he must file a motion seeking permission to exceed the page limit, and
11 the motion itself may not exceed 3 pages. The General Order also notes that
12 "[t]he Court looks with disfavor on motions to exceed page limits, so permission
13 to do so will not be routinely granted."

14 The Complaint is 119 pages long. Plaintiff did file a second motion seeking
15 permission to exceed the 30-page limit for a complaint. However, the Court denies
16 the motion again because the complaint remains grossly overlong and barely
17 legible. The form complaint instructs that a plaintiff is to "State as briefly as
18 possible the FACTS supporting" each claim. (*See, e.g.*, ECF No. 11 at 17.) The
19 instructions also direct a plaintiff to "state the facts clearly in your own words
20 without citing legal authority or argument." (*Id.*) But it appears that here Plaintiff
21 has included long recitations of day-by-day allegations spanning three years or
22 more in minute detail as well as lengthy descriptions of his own research related
23 to his medical concerns. He also sets forth lengthy quotations, apparently relating
24 parts of or full grievances, including his request and the response. It appears that
25 he has once again included recitations of NDOC medical directives,
26 administrative regulations, and operational procedures. As the Court previously
27 advised, these should not be included and serve only to make it essentially
28 impossible to identify whether Plaintiff sets forth brief factual allegations to

1 support any of his claims. Accordingly, the Court dismisses the Second Amended
 2 Complaint without prejudice and with leave to amend. Any third amended
 3 complaint must comply with the 30-page limit or be accompanied by a motion
 4 seeking permission to exceed the page limit. **Again, the Court is highly unlikely**
 5 **to grant permission for Plaintiff to exceed the page limit beyond a few pages.**

6 **A. Motion for Appointment of Counsel**

7 With the SAC, Plaintiff also filed a 46-page motion for appointment of
 8 counsel. (ECF No. 13.) The motion explains that another inmate drafted the FAC
 9 and now the SAC as well as the motion for counsel. That inmate assistant states
 10 that he will soon be paroled. The inmate assistant argues that Plaintiff needs
 11 counsel because he has substantial medical issues involving “multiple levels of
 12 evidence and argument.” (*Id.* at 1.) He also argues that Plaintiff suffers from
 13 depression and post-traumatic stress syndrome. A litigant does not have a
 14 constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims.
 15 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C.
 16 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable
 17 to afford counsel.” However, the court will appoint counsel for indigent civil
 18 litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970
 19 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional
 20 circumstances’ exist, a court must consider ‘the likelihood of success on the
 21 merits as well as the ability of the petitioner to articulate his claims pro se in light
 22 of the complexity of the legal issues involved.” *Id.* “Neither of these considerations
 23 is dispositive and instead must be viewed together.” *Id.*

24 Here, the inmate assistant includes about 30 pages of what appear to be
 25 progress notes of NDOC medical personnel that indicate that Plaintiff received
 26 medication and counseling after a 2015 incident in which he was stabbed by
 27 other inmates. (*Id.* at 4-32.) While the records reflect that Plaintiff suffered
 28 traumatic memories and nightmares after the attack, medical personnel also

1 indicated that Plaintiff was alert, fully oriented, and that his thought process was
 2 clear, coherent, and logical. Nothing in the records suggests that Plaintiff is
 3 mentally incapable of preparing his own complaint. The inmate assistant also
 4 states in the motion that Plaintiff has some problems with blurry vision. The
 5 medical notes indicate that Plaintiff discussed his legal proceedings with the
 6 medical personnel, including his review of discovery and his making lists of pros
 7 and cons surrounding the litigation. While not dispositive, nothing in the
 8 included records indicates that Plaintiff may have significantly impaired vision.
 9 The Court has no reason not to think that Plaintiff may in fact do a more effective
 10 job of briefly setting forth the specific facts that support his claims. The Court
 11 does not find exceptional circumstances that warrant the appointment of counsel
 12 at this time. The Court denies the motion for appointment of counsel without
 13 prejudice.

14 **B. FRCP 8, 10, 18, 20**

15 The Court now advises Plaintiff again of the following requirements under
 16 the Federal Rules of Civil Procedure (“FRCP”) or the District of Nevada’s Local
 17 Rules of Practice in order to facilitate the filing of a properly formatted amended
 18 complaint. Plaintiff is advised that the failure to comply with these rules when
 19 drafting and filing his amended complaint may result in this action being
 20 dismissed.

21 **1. Rules 8 and 10**

22 Plaintiff’s third amended complaint must contain “a short and plain
 23 statement of the claim showing that [Plaintiff] is entitled to relief.” Fed. R. Civ. P.
 24 8(a)(2). “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P.
 25 8(d)(1). A district court has the power to dismiss a complaint when a plaintiff fails
 26 to comply with Rule 8. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996);
 27 *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). If the factual
 28 elements of a cause of action are not organized into a short and plain statement

1 of a particular claim, a district court may dismiss for failure to comply with Rule
 2 8. *Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 640 (9th Cir. 1988). Under Rule
 3 8, a plaintiff may not allege extraneous facts that are not part of the factual basis
 4 for a particular claim. *See Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013)
 5 (recognizing that Rule 8 is violated when a plaintiff pleads too much); *Bell Atl.*
 6 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that the complaint “does not
 7 need detailed factual allegations” but requires more “than labels and conclusions,
 8 [or] a formulaic recitation of the elements of a cause of action”).

9 Additionally, a party must state its claims or defenses in numbered
 10 paragraphs, each limited as far as practicable to a single set of circumstances.”
 11 Fed. R. Civ. P. 10(b). “[E]ach claim founded on a separate transaction or
 12 occurrence . . . must be stated in a separate count.” *Id.* If Plaintiff wishes to
 13 amend his SAC, he must set forth his claims in a simple, concise, and direct
 14 manner in order to meet the requirements of Rule 8.

15 **2. Rules 18 and 20**

16 A basic lawsuit is a single claim against a single defendant. Rule 18(a)
 17 allows a plaintiff to add multiple claims to the lawsuit when they are against the
 18 same defendant. Rule 20(a)(2) allows a plaintiff to join multiple defendants to a
 19 lawsuit where the right to relief arises out of the same “transaction, occurrence,
 20 or series of transactions” and “any question of law or fact common to all
 21 defendants will arise in the action.” However, unrelated claims that involve
 22 different defendants must be brought in separate lawsuits. *See George v. Smith*,
 23 507 F.3d 605, 607 (7th Cir. 2007) (holding that “[a] buckshot complaint that
 24 would be rejected if filed by a free person—say, a suit complaining that A
 25 defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt,
 26 and E infringed his copyright, all in different transactions—should be rejected if
 27 filed by a prisoner”). These rules are not only intended to avoid confusion that
 28 arises out of bloated lawsuits, but also to ensure that inmates pay the required

1 filing fees for their lawsuits and prevent inmates from circumventing the three
2 strikes rule under the Prison Litigation Reform Act. 28 U.S.C. § 1915(g).

3 The Court cannot discern from the barely-legible, extremely lengthy SAC
4 whether Plaintiff brings different claims against multiple prison officials that are
5 unrelated and cannot proceed in one single action. The Court advises Plaintiff
6 that each claim that is raised in any third amended complaint must be permitted
7 by either Rule 18 or Rule 20. Plaintiff may state a single claim against a single
8 defendant. Plaintiff may then add any additional claims to his action that are
9 against the same defendant under Rule 18. Plaintiff may also add any additional
10 claims against other defendants if those claims arise from the same transaction,
11 occurrence, or series of transactions as his original claim. Fed. R. Civ. P. 20(a)(2).
12 Any attempt to join claims that are not permitted by the FRCP will result in those
13 claims being dismissed as improperly joined.

14 Claims may not be joined merely because they occurred in the same prison,
15 the violators had the same supervisor, or the claims are based on the same type
16 of constitutional violation. Plaintiff may not evade these requirements merely by
17 alleging that he told the same person about them or by making conclusory
18 allegations that all the defendants are engaging in a conspiracy or campaign of
19 harassment. Plaintiff also may not evade these requirements by including
20 multiple causes of action in a part of the complaint form reserved for one claim.

21 **C. Local Rules of Practice**

22 Plaintiff must also follow the District of Nevada's Local Rules of Practice.
23 Nevada Local Rule of Practice IA 10-1(a)(1)-(3) provides that a filed document
24 cannot contain more than 28 lines of text per page, the text size must be size 12
25 font or larger; and handwriting must be legible.

26 The Court acknowledges that Plaintiff, apparently through his inmate
27 assistant, has made an effort to comply with these provisions. While the SAC is
28

1 still difficult to read, Plaintiff has numbered the lines and included 28 lines of
2 text per page.

3 **IV. LEAVE TO AMEND**

4 Plaintiff is granted leave to file a third amended complaint to cure the
5 deficiencies of the complaint. If Plaintiff chooses to file an amended complaint, he
6 is reminded that an amended complaint supersedes (replaces) the second
7 amended complaint and, thus, the amended complaint must be complete in itself.
8 *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546
9 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original
10 complaint is irrelevant; an amended pleading supersedes the original”); *see also*
11 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for
12 claims dismissed with prejudice, a plaintiff is not required to reallege such claims
13 in a subsequent amended complaint to preserve them for appeal). Plaintiff’s
14 amended complaint must contain all claims, defendants, and factual allegations
15 that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff should file the
16 amended complaint on this Court’s approved prisoner civil rights form, it must
17 be entitled “Third Amended Complaint,” and he must try to keep to the page limits
18 provided on the form.

19 The Court notes that if Plaintiff chooses to file an amended complaint
20 curing the deficiencies, as outlined in this order, Plaintiff will file the amended
21 complaint within 30 days from the date of entry of this order. If Plaintiff chooses
22 not to file an amended complaint curing the stated deficiencies, this action will
23 be dismissed without prejudice.

24 **V. CONCLUSION**

25 For the foregoing reasons, it is ordered that a decision on the application
26 to proceed *in forma pauperis* (ECF No. 1) is deferred.

27 It is further ordered that Plaintiff’s motion for appointment of counsel (ECF
28 No. 13) is denied without prejudice.

1 It is further ordered that the Clerk of Court send Plaintiff a courtesy copy
2 of the Second Amended Complaint (ECF No. 11.) This is the operative complaint.

3 It is further ordered that Plaintiff's motion for leave to file a complaint that
4 exceeds the page limit (ECF No. 12) is denied.

5 It is further ordered that the Second Amended Complaint is dismissed
6 without prejudice and with leave to amend.

7 It is further ordered that, if Plaintiff chooses to file a third amended
8 complaint curing the deficiencies of his complaint, as outlined in this order,
9 Plaintiff will file the second amended complaint within 30 days from the date of
10 entry of this order.

11 It is further ordered that the Clerk send to Plaintiff the approved form for
12 filing a § 1983 complaint and instructions for the same. If Plaintiff chooses to file
13 an amended complaint, he should use the approved form and he will write the
14 words "Third Amended" above the words "Civil Rights Complaint" in the caption.

15 It is further ordered that the Clerk send to Plaintiff a copy of the District of
16 Nevada General Order No. 2021-05.

17 It is further ordered that, if Plaintiff chooses to file a third amended
18 complaint, the Court will screen the amended complaint in a separate screening
19 order. The screening process will take several months.

20 It is further ordered that, if Plaintiff fails to file an amended complaint
21 curing the deficiencies outlined in this order, this action will be dismissed without
22 prejudice.

23 Dated this 23rd day of December 2024.

24
25 

26 ANNE R. TRAUM
27 UNITED STATES DISTRICT JUDGE
28